BOARD OF ALIEN LABOR CERTIFICATION APPEALS
800 K St., N.W.
WASHINGTON, D.C. 20001-8002

'Notice: This is an electronic bench opinion which has not been verified as official'

Date: 10/06/97
Case No: 96-INA-144

In the Matter of:

SAL'S PIZZA
Employer

On Behalf of:

HICHAM TABACH
Alien

Appearance: Richard Realmuto, Esq.
for the Employer and the Alien

Before: Holmes, Huddleston and Neusner
Administrative Law Judges

JOHN C. HOLMES
Administrative Law Judge

DECISION AND ORDER

This case arose from an application for labor certification on behalf of alien, Hicham Tabach ("Alien") filed by Employer Sal's Pizza ("Employer") pursuant to 212(a)(5)(A) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1182(a)(5)(A)(the "Act"), and the regulations promulgated thereunder, 20 CFR Part 756. The Certifying Officer ("CO") of the U.S. Department of Labor, Philadelphia, Pennsylvania denied the application, and the Employer and Alien requested review pursuant to 20 CFR 656.26.

Under 212(a)(5) of the act, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor may receive a visa if the Secretary of Labor ("Secretary") has determined and certified to the Secretary of State and to the Attorney General that (1) there are not sufficient workers who are able, willing, qualified and available at the time of the application and at the place where the alien is to perform such labor; and, (2) the employment of the alien will not adversely affect the wages and working conditions of the U.S. workers similarly employed.

Employers desiring to employ an alien on a permanent basis must demonstrate that the requirements of 20 CFR, Part 656 have been met. These requirements include the responsibility of the Employer to recruit U.S. workers at the prevailing wage and under prevailing working conditions through the public employment

service and by other means in order to make a good faith test of U.S. worker availability.

The following decision is based on the record upon which the CO denied certification and the Employer's request for review, as contained in an Appeal File ("AF"), and any written arguments of the parties.

STATEMENT OF THE CASE

On April 12, 1993, the Employer filed an amended application for labor certification to enable the Alien to fill the position of Pizza Man/Cook in its Italian Restaurant.

The duties of the job offered were described as follows:

Combining proper quantity of flour with water, yeast and other ingredients to create a dough which will be used for pizza pies. Must shape the compressed ball of dough to a flat round pie, cover pie with tomatoes, cooked tomato pulp, herbs, mozzarella cheese, olive oil, salt and pepper and romano cheese, olive of chopped meat, anchovies, mushrooms, sausage, olives, onions, green pepper or eggplant to create a pizza that is appealing to the sense of sight as well as smell and taste.

No specific education and 2 years experience in the job were required. Wages were $8.62 per hour. The applicant reports to the Owner. (AF-87-90)

On March 4, 1995, the CO issued a NOF denying certification. The CO changed the Occupational Title to Baker, Pizza from Cook/Specialty based on the job description. Thus only 6 months to one year experience could be required for the job requirement.

The NOF twice stated in underline:”Rebuttal evidence must be filed with this office, and not with the local Job Service office, by the due date specified on the cover sheet. In order to accommodate the placement of the advertisement, additional rebuttal time may be granted upon written request to the Regional Certifying officer.”

Following the first note the CO stated as follows:”You may rebut this finding EITHER by amending or deleting the restrictive requirement(s) OR by documenting business necessity, you may not do both. If you choose to document business necessity, you may not also indicate a willingness to delete or amend the requirement(s) in the event that your business necessity rebuttal is not accepted”.

The CO later explained that if Employer chose to delete the requirements “You must contact your local Job Service to obtain referral instructions prior to placing the advertisement. Failure to arrange for the placement of the advertisement with the local Job Service office could result in the denial of your

application."(AF-50-53)

Employer, March 14, 1994, through, counsel expressed disagreement with the CO's change of the job title from Pizza Man/Cook of Italian dishes to that of a Baker/Pizza Man and set out arguments to support that position. He then stated "Moreover, our client has also informed me that pursuant to one of your suggested alternatives, he would like to reduce the number of years experience which were required for this position to that of one(1) year with the re posting of the notice and the readvertisement notice for her approval". Employer went on to state that he had contacted Ms. Street the case worker assigned to the matter who advised him to forward the amended application. "For all the reasons stated herein, I respectfully request that you grant my client an extension to re-advertise the position." (AF-48,49)[1]

On March 22, 1994 the CO granted an extension of the time for filing rebuttal until May 13, 1994 from April 8, 1994 in response to Employer's request. (AF-47)

On May 4, 1994, Ms. Street of the state Employment Service informed Employer that the period of recruitment had expired, and that Employer had until June 18, 1994 to complete the application process.

On June 27, 1994 the Regional Office received a letter from Employer, dated May 5, 1994, and stamped as received in the State Office of Employment Services on May 23, 1994. As part of the rebuttal concerning five applicants, Employer's attorney stated that Michelle Griest "..finally called our client and scheduled an appointment for Monday May 16, 1994 but did not appear for the interview." (AF-19-46)

On June 28, 1994, the CO issued a Final Determination denying certification, based on late rebuttal filing, stating in pertinent part: "The rebuttal to the Notice of Findings although dated May 5, 1994 discusses telephone conversations of May 16, 1994 and was not received by the Local Office until May 23, 1994." The CO further pointed out that the NOF specifically required extension of filing dates requests must go through the CO rather than to the local Job Service Office. Therefore, the NOF automatically becomes the final decision denying certification. (AF-18)

On July 19, 1994, the Employer filed a request for Judicial Review of denial of labor certification. In this appeal Employer

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[1] The Maryland department involved with employment is entitled the Department of Economic and Employment Development. We have used the term state Employment Service, since that has been the traditional title often used in BALCA cases. The CO often refers to the Job Service. These are the same entities.

relied on the assurances expressed by Ms. Street that she had extended the date of filing for rebuttal until June 18, 1994, which applied to the new recruitment effort. (AF-1-17)

DISCUSSION

Section 656.25(e) provides that the Employer's rebuttal evidence must rebut all the findings of the NOF, and that all findings not rebutted shall be deemed admitted. Our Lady of Guadalupe School, 88-INA-313 (1989); Belha Corp., 88-INA-24 (1989)(en banc). The sole basis for denial of certification is the alleged failure of Employer to meet the "35 day rule" required under 20 CFR 656.25(c)(3)for answering the CO's NOF. In Madelaine S. Bloom, 88-INA-152 (Oct.13, 1989)(en banc), the Board held that the requirement to file a rebuttal within 35 days was neither jurisdictional or unwaivable and that the Board could review such determinations by a CO. Mandatory deadlines, however, are waived only in cases of manifest injustice in those rare instances in which failure to do so would result.

The CO in its NOF gave two options to Employer, to either (1) file rebuttal within 35 days, or (2) to readvertise the position. The CO emphasized that Employer had to choose one, and could not do both. In its "rebuttal" letter, Employer protested the determination of the CO and the basis for the failure to grant certification. However, Employer went on to state that it wished to readvertise the position and addressed a letter to Ms. Street of the state Employment Service with a copy to the CO stating clearly its intention to do so. Employer, thereafter, relied on the extension date given by the state Employment Service, acting in Employer's eyes as an agent for the CO.

The difference of opinion between the CO and Employer on filing due dates appears to at least initially have arisen over the difference between rebuttal and readvertising. The CO seems to have treated Employer's replies as rebuttal, thereby maintaining authority for granting or denying extension of due dates with the CO. However, Employer, clearly chose to readvertise as permitted by the CO as an alternative to rebuttal. Employer thereafter informed Employer of its decision and had a right to rely on the procedure set out by the CO. Once Employer embarked on its alternative course an implied shift of authority to the Employment Service, which was involved in the readvertising procedure, to determine deadlines for meeting the new advertising requirements is warranted. In that connection, while the CO made it clear that permission for more rebuttal time for placement of an advertisement must be through the CO, the CO's notice was silent as to obtaining permission for waiver of the date for completion of the process. Indeed, the CO stated that processing of the amended application would be through the state Employment Service. It would be manifest injustice for the CO to suggest a method of compliance with its NOF but then not permit time to complete the process.

In so determining, we recognize that there may have been confusion in mailing. Further the CO's contention that Employer has apparently indulged in "date fixing" since it discusses a May 16, 1994 event in a letter dated May 5, 1994 which was received by the state office on May 23 may have merit and be an attempt to "paper over" the May 13, 1994 extension date given by the CO. We, also, recognize that the certification process has in this case dragged on due in substantial part to Employer's actions. Importantly, however, the date of the letter by Ms. Street giving Employer an extension date until June 18, 1994, was May 5, 1994, eight days prior to the extension date given by the CO for filing "rebuttal". This would support Employer's contentions that it was in verbal contact with Ms. Street. Under the circumstances we find that the state Employment Service had been given and had assumed authority to act as the CO's agent in setting a deadline date for the amended filing which was to become "rebuttal". We decline to fix blame as to whether the State Service should have informed the CO of the new deadline, or whether such was the obligation of the CO to inquire. The notice of deadline for readvertising by the CO could have stated clearly that in either case of rebuttal or of readvertising, approval of extension must be obtained from the CO and not the state Employment Service. Nevertheless, the principle that due process must be afforded applicants by a U.S. government agency is our overriding concern. We are, therefore compelled to remand this matter to the CO for determination on the record if warranted or for other appropriate action.

ORDER

The Certifying Officer's denial of labor certification is VACATED and the matter REMANDED.

For the Panel:

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JOHN C. HOLMES
Administrative Law Judge

BOARD OF ALIEN LABOR CERTIFICATION APPEALS
800 K St., N.W.
WASHINGTON, D.C. 20001-8002

Date:
Case No: 95-INA-286

In the Matter of:

M.K. DESIGNERS, INC.
Employer

On Behalf of:

SETRAK MERACHIAN
Alien

Appearance: Baliozian & Associates
for the Employer and the Alien

Before: Holmes, Huddleston and Neusner
Administrative Law Judges

JOHN C. HOLMES
Administrative Law Judge

DECISION AND ORDER

This case arose from an application for labor certification on behalf of alien, Setrak Marachian ("Alien") filed by Employer M.K.Designers, Inc. ("Employer") pursuant to 212(a)(5)(A) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1182(a)(5)(A)(the "Act"), and the regulations promulgated thereunder, 20 CFR Part 756. The Certifying Officer ("CO") of the U.S. Department of Labor, San Francisco, California, denied the application, and the Employer and Alien requested review pursuant to 20 CFR 656.26.

Under 212(a)(5) of the act, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor may receive a visa if the Secretary of Labor ("Secretary")

has determined and certified to the Secretary of State and to the Attorney General that (1) there are not sufficient workers who are able, willing, qualified and available at the time of the application and at the place where the alien is to perform such labor; and, (2) the employment of the alien will not adversely affect the wages and working conditions of the U.S. workers similarly employed.

Employers desiring to employ an alien on a permanent basis must demonstrate that the requirements of 20 CFR, Part 656 have been met. These requirements include the responsibility of the Employer to recruit U.S. workers at the prevailing wage and under prevailing working conditions through the public employment service and by other means in order to make a good faith test of U.S. worker availability.

The following decision is based on the record upon which the CO denied certification and the Employer's request for review, as contained in an Appeal File ("AF"), and any written arguments of the parties.

STATEMENT OF THE CASE

On April 15, 1993, the Employer filed an application for labor certification to enable the Alien, a Lebanese national, to fill the position of Wood Machinist in its cabinet and furniture manufacturing and construction company.

The duties of the job offered were described as follows:

> Responsible for set up and operation of woodworking machinery for fabrication of doors, windows, cabinets, and fine furniture. Operate power saws, drills, drill presses, sanders, tenoner, mortising machine, boring machine, router,and hand tools. Prepare parts according to specifications. Follow intricate design specifications for furniture orders.

No educational requirements and two years experience in the job were required. Wages were $640.00 per week. (AF-25-53)

On June 22, 1994, the CO issued a NOF denying certification, finding that a U.S. applicant, Kenneth R. Pruett was unlawfully rejected. Employer alleged in his undated recruitment results report that applicant Pruett had stated the job site was too far. In a signed questionnaire from Mr. Pruett, he stated that he would not have turned down a job for $16.00 per hour, indeed, that he would have gone to Chicago or New York for that money. He further stated that he received a phone call from a woman who asked him if he could do carvings. She also asked if he could speak Farsi. The woman told him he was not qualified and hung up.(AF-21-23)

Employer, June 29, 1994, forwarded its rebuttal, stating: "As

Mr. Pruett stated to you in his questioneer, Mrs. Keuroghlian asked the applicant if he had experience doing wood carving, using the specialized equipment and hand tools as was required in the job description, to construct some of the more intricate detail designs on furniture and cabinets. He responded that he was not able to do carvings. It was based upon this response that he was told that he was probably not qualified. Mr. Pruett also stated to Mrs. Keuroghlian that the job site in Glendale was too far to come for a job." (AF-9-20)

On August 23, 1994, the CO issued a Final Determination denying certification since Mr. Pruett as a master carpenter according to his resume who owned and operated a custom cabinet shop was qualified for the job opportunity. The fact that he cannot do carvings with chisels is not pertinent since the duty was not listed on the ETA 750A form. (AF-6-8)

On September 7, 1994, Employer filed a request for review and reconsideration of Final Determination. (AF-1-5)

DISCUSSION

Section 656.25(e) provides that the Employer's rebuttal evidence must rebut all the findings of the NOF, and that all findings not rebutted shall be deemed admitted. Our Lady of Guadalupe School, 88-INA-313 (1989); Belha Corp., 88-INA-24 (1989)(en banc). Failure to address a deficiency noted in the NOF supports a denial of labor certification. Reliable Mortgage Consultants, 92-INA-321 (Aug. 4, 1993).

Section 656.21(b)(6) provides that an employer must show that U.S. applicants were rejected solely for job-related reasons. Employers are required to make a good-faith effort to recruit qualified U.S. workers for the job opportunity. H.C. LaMarche Ent.,Inc. 87-INA-607 (1988). As a general matter, an employer unlawfully rejects an applicant where the applicant meets the employer's stated minimum requirements, but fails to meet requirements not stated in the application or the advertisements. Jeffrey Sandler, M.D., 89-INA-316 (Feb.11, 1991)(en banc).

We find the CO was correct in finding that the rejection of Mr. Pruett was unlawful, in that he appeared well qualified for the position and expressed an interest in accepting same. Employer's reason for rejection was that applicant was not familiar with a hand chisel, a duty that was not set out in the job requirement and would not appear to be accurate, given his long and intimate experience in the field. Where an applicant's resume shows a broad range of experience, education, and training that raises a reasonable possibility that the applicant is qualified, although the resume does not expressly state that he or she meets all the job requirements, an employer bears the burden of further investigating the applicant's credentials. Gorchev & Gorchev Design, 89-INA-118 (Nov. 29, 1990)(en banc).

ORDER

The Certifying Officer's denial of labor certification is AFFIRMED.

For the Panel:

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JOHN C. HOLMES
Administrative Law Judge

BOARD OF ALIEN LABOR CERTIFICATION APPEALS
800 K St., N.W.
WASHINGTON, D.C. 20001-8002

Date:
Case No: 95-INA-0554

In the Matter of:

BUCIO INTERNATIONAL FOODS, INC.
Employer

On Behalf of:

AUDBERTO FLORES
Alien

Appearance: Lillian Sondon, Esq.
for the Employer and the Alien

Before: Holmes, Huddleston and Neusner
Administrative Law Judges

JOHN C. HOLMES
Administrative Law Judge

DECISION AND ORDER

This case arose from an application for labor certification on behalf of alien, Audberto Flores ("Alien") filed by Employer Bucio International Foods, Inc. ("Employer") pursuant to 212(a)(5)(A) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1182(a)(5)(A)(the "Act"), and the regulations promulgated thereunder, 20 CFR Part 756. The Certifying Officer ("CO") of the U.S. Department of Labor, San Francisco, California, denied the application, and the Employer and Alien requested review pursuant to 20 CFR 656.26.

Under 212(a)(5) of the act, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor may receive a visa if the Secretary of Labor ("Secretary") has determined and certified to the Secretary of State and to the Attorney General that (1) there are not sufficient workers who are able, willing, qualified and available at the time of the application and at the place where the alien is to perform such labor; and, (2) the employment of the alien will not adversely affect the wages and working conditions of the U.S. workers similarly employed.

Employers desiring to employ an alien on a permanent basis must demonstrate that the requirements of 20 CFR, Part 656 have been met. These requirements include the responsibility of the Employer to recruit U.S. workers at the prevailing wage and under prevailing working conditions through the public employment service and by other means in order to make a good faith test of U.S. worker availability.

The following decision is based on the record upon which the CO denied certification and the Employer's request for review, as contained in an Appeal File ("AF"), and any written arguments of the parties.

STATEMENT OF THE CASE

On August 30, 1993, the Employer filed an application for labor certification to enable the Alien to fill the position of Senior Civil Engineer in its Civil Transportation Engineering Consulting company.

The duties of the job offered were described as follows:

Transportation Studies, Traffic Engineering, Highway design and construction inspection. Perform traffic impact studies. Conduct traffic surveys and data collection and use highway capacity software (HCS) to analyze data collected. Prepare right-of-way maps. Conduct research on property deeds. Plot property lines on base maps. Conduct research on property deeds. Plot property lines on base map. Prepare proposals and reports for new jobs. Schedule meetings with clients and act as company Senior Traffic Engineer.

A B.S. in Engineering and 5 years experience in the job were required. Wages were $20.37 per hour. The applicanty would supervise 5 employees and report to the Presdient. (AF-1-44)

On February 23, 1995, the CO issued a NOF denying certification. The CO alleged that employer may have violated 20 C.F.R. 656.21(b)(5)in that either alien did not have the requisite experience required as set out in the application or that he is not now serving as a Senior Traffic Engineer, and that other U.S. workers could be trained for the job. The CO required documentation if employer could not train a U.S. worker if alien

is currently holding that position. Secondly, the CO found that three of the four U.S. applicants, Mohamed Azzat, Alexander Frenzel, and Francis B. Sarpong were unlawfully rejected.(AF-47-51)

Employer, April 25, 1995, forwarded its rebuttal, stating that at the time of hire, alien had the requisite 5 years experience as a Senior Transportation Engineer. In that connection, a letter was attached dated December 3, 1984 from the President of Cvtra International Consultants, an Nigerian company, that informed alien he had been appointed "Senior Transportation Engineer". This was the same company that alien's resume indicated he was employed until Dec. 1989. Additionally, correspondence between Employer and the New Jersey Department of Transportation demonstrated alien's assignment for a specified period as a Senior Traffic Engineer working on traffic and highway matters requiring HAPS computer usage and knowledge of New Jersey State Highway Access Management Code, *inter alia.* (AF-AF-52-62,67)

On May 2, 1995, the CO issued a Final Determination denying certification since the three applicants were rejected on the basis of their resumes only. "It would appear, based on the presented credentials, that a good faith effort would have included contacting and interviewing these applicants. At the very least, by failing to interview these three applicants, the employer has not established or proven they are unqualified or unavailable." (AF-52-62)

On May 31, 1995, Employer filed a request for review and reconsideration of Final Determination. (AF-66-73)

DISCUSSION

Section 656.25(e) provides that the Employer's rebuttal evidence must rebut all the findings of the NOF, and that all findings not rebutted shall be deemed admitted. Our Lady of Guadalupe School, 88-INA-313 (1989); Belha Corp., 88-INA-24 (1989)(en banc). Failure to address a deficiency noted in the NOF supports a denial of labor certification. Reliable Mortgage Consultants, 92-INA-321 (Aug. 4, 1993).

Section 656.21(b)(6) provides that an employer must show that U.S. applicants were rejected solely for job-related reasons. Employers are required to make a good-faith effort to recruit qualified U.S. workers for the job opportunity. H.C. LaMarche Ent.,Inc. 87-INA-607 (1988). Where an applicant's resume shows a broad range of experience, education, and training that raises a reasonable possibility that the applicant is qualified, although the resume does not expressly state that he or she meets all the job requirements, an employer bears the burden of further investigating the applicant's credentials. Gorchev & Gorchev Design, 89-INA-118 (Nov. 29, 1990)(en banc). On the other hand, where the Final Determination does not respond to Employer's argfuments or evidence on rebuttal, the matters are deemed to be

successfully rebutted and are not in issue before the Board. Barbara Harris, 88-INA-32. (April 5, 1989) Thus where a CO fails to address contentions raised by Employer on rebuttal, the CO may be reversed. Duarte Gallery, Inc., 88-INA-92 (October 11, 1989).

We believe the CO erred in flatly finding alien was not

ORDER

The Certifying Officer's denial of labor certification is AFFIRMED.

For the Panel:

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JOHN C. HOLMES
Administrative Law Judge

BOARD OF ALIEN LABOR CERTIFICATION APPEALS
800 K St., N.W.
WASHINGTON, D.C. 20001-8002

Date:
Case No: 95-INA-286

In the Matter of:

M.K. DESIGNERS, INC.
Employer

On Behalf of:

SETRAK MERACHIAN
Alien

Appearance: Baliozian & Associates
for the Employer and the Alien

Before: Holmes, Huddleston and Neusner
Administrative Law Judges

JOHN C. HOLMES
Administrative Law Judge

DECISION AND ORDER

This case arose from an application for labor certification on behalf of alien, Setrak Marachian ("Alien") filed by Employer M.K.Designers, Inc. ("Employer") pursuant to 212(a)(5)(A) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1182(a)(5)(A)(the "Act"), and the regulations promulgated thereunder, 20 CFR Part 756. The Certifying Officer ("CO") of the U.S. Department of Labor, San Francisco, California, denied the application, and the Employer and Alien requested review pursuant to 20 CFR 656.26.

Under 212(a)(5) of the act, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor may receive a visa if the Secretary of Labor ("Secretary") has determined and certified to the Secretary of State and to the Attorney General that (1) there are not sufficient workers who are able, willing, qualified and available at the time of the application and at the place where the alien is to perform such labor; and, (2) the employment of the alien will not adversely affect the wages and working conditions of the U.S. workers similarly employed.

Employers desiring to employ an alien on a permanent basis must demonstrate that the requirements of 20 CFR, Part 656 have been met. These requirements include the responsibility of the Employer to recruit U.S. workers at the prevailing wage and under prevailing working conditions through the public employment service and by other means in order to make a good faith test of U.S. worker availability.

The following decision is based on the record upon which the CO denied certification and the Employer's request for review, as contained in an Appeal File ("AF"), and any written arguments of the parties.

STATEMENT OF THE CASE

On April 15, 1993, the Employer filed an application for labor certification to enable the Alien, a Lebanese national, to fill the position of Wood Machinist in its cabinet and furniture manufacturing and construction company.

The duties of the job offered were described as follows:

> Responsible for set up and operation of woodworking machinery for fabrication of doors, windows, cabinets, and fine furniture. Operate power saws, drills, drill presses, sanders, tenoner, mortising machine, boring machine, router,and hand tools. Prepare parts according to specifications. Follow intricate design specifications for furniture orders.

No educational requirements and two years experience in the job were required. Wages were $640.00 per week. (AF-25-53)

On June 22, 1994, the CO issued a NOF denying certification, finding that a U.S. applicant, Kenneth R. Pruett was unlawfully rejected. Employer alleged in his undated recruitment results report that applicant Pruett had stated the job site was too far. In a signed questionnaire from Mr. Pruett, he stated that he would not have turned down a job for $16.00 per hour, indeed, that he would have gone to Chicago or New York for that money. He further stated that he received a phone call from a woman who asked him if he could do carvings. She also 800 K St., N.W.
WASHINGTON, D.C. 20001-8002

Date:
Case No: 95-INA-286

In the Matter of:

M.K. DESIGNERS, INC.
Employer

On Behalf of:

SETRAK MERACHIAN
Alien

Appearance: Baliozian & Associates
for the Employer and the Alien

Before: Holmes, Huddleston and Neusner
Administrative Law Judges

JOHN C. HOLMES
Administrative Law Judge

DECISION AND ORDER

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affect the wages and working conditions of the U.S. workers similarly employed.

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The duties of the job offered were described as follows:

> Responsible for set up and operation of woodworking machinery for fabrication of doors, windows, cabinets, and fine furniture. Operate power saws, drills, drill presses, sanders, tenoner, mortising machine, boring machine, router,and hand tools. Prepare parts according to specifications. Follow intricate design specifications for furniture orders.

No educational requirements and two years experience in the job were required. Wages were $640.00 per week. (AF-25-53)

On June 22, 1994, the CO issued a NOF denying certification, finding that a U.S. applicant, Kenneth R. Pruett was unlawfully rejected. Employer alleged in his undated recruitment results report that applicant Pruett had stated the job site was too far. In a signed questionnaire from Mr. Pruett, he stated that he would not have turned down a job for $16.00 per hour, indeed, that he would have gone to Chicago or New York for that money. He further stated that he received a phone call from a woman who asked him